

TENNESSEE REAL ESTATE COMMISSION MINUTES

February 6-7, 2008

The Tennessee Real Estate Commission convened on February 6, 2008, at 9:13 a.m., in Room 160, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee. **The following Commission Members were present: Chairman Charles Haynes, Vice Chairman William "Bear" Stephenson, Commissioner Valerie Joh, Commissioner David Flitcroft, Commissioner Grover Collins, Commissioner Carol Tate, Commissioner Wendell Alexander, and Commissioner Isaac Northern. Commissioner Gary Cunningham was absent. Others Present: Eve Maxwell, Executive Director, Kathryn Wiseman, Staff Attorney, Mandy Brady, Paralegal, and Kelly McDermott, Administrative Secretary.**

The next order of business was the adoption of the agenda (**Exhibit 1**) for the February 2008 Commission meeting. **Commissioner Tate made a motion to adopt the February 2008 agenda; seconded by Commissioner Alexander; Unanimous Vote; Motion Carried.**

The next order of business was the approval of the minutes from the January 2008 meeting (**Exhibit 2**). **Commissioner Alexander made a motion to defer the approval of the minutes; seconded by Commissioner Flitcroft; Unanimous Vote; Motion Carried.**

INFORMAL APPLICANT CONFERENCES

Scott Martin, applicant, appeared before the Commission with his Principal Broker Bobbie Noreen to seek approval for an affiliate broker license. Mr. Martin disclosed convictions for Attempt to Commit Theft in 2000 and Operating a Vehicle with a BAC of .15 or more in 2004. **Commissioner Northern made a motion to approve; seconded by Vice-Chairman Stephenson; Unanimous Vote; Motion Carried.**

LICENSEE/APPLICANT REQUESTS

John Amaefula, licensee, 272750, appeared before the Commission to request reinstatement without penalty. **Commissioner Alexander made a motion to defer any decision regarding reinstatement until Mr. Amaefula's complaint which was closed pending litigation in 2003 is reviewed by Commissioner Flitcroft and presented to the Commission; seconded by Vice-Chairman Stephenson for discussion; Opened to discussion; Commissioner Alexander called for the question; Vote: 6 Yes, 1 No; Motion Carried. Commissioner Alexander made a motion to open a complaint against Mr. Amaefula's principal broker for lack of supervision; seconded by Commissioner Flitcroft; Unanimous Vote; Motion Carried.**

Chairman Haynes left the meeting and Vice-Chairman Stephenson acted as Chairman in his absence.

INFORMAL CONFERENCES (CONTINUED)

Namon Hill, applicant, appeared before the Commission with his Principal Broker Ramona Lyons to seek approval for an affiliate broker license. Mr. Hill disclosed a conviction for Facilitation to Sell Cocaine in 1995. **Commissioner Northern made a motion to approve; seconded by Commissioner Tate; Unanimous; Motion Carried.**

LICENSEE/APPLICANT REQUESTS (CONTINUED)

Brendan Quigley, applicant, 316150, is requesting a waiver of the 50 mile rule. **Chairman Haynes made a motion to deny, however Mr. Quigley may appear before the Commission to explain the nature of his business and seek approval; seconded by Commissioner Joh; Unanimous Vote; Motion Carried.**

Dan Denley, licensee, 265916 and Gail Denley, licensee, 272489, requested a waiver of the 50 mile rule. **Commissioner Collins made a motion to approve; seconded by Commissioner Flitcroft; Vote: 6 Yes, 1 No; Motion Carried.**

Tony Gant, applicant, requested a waiver of the 50 mile rule. **Chairman Haynes made a motion to deny, however, Mr. Gant and his principal broker Jake Almond may appear to explain the nature of their business and seek approval; seconded by Commissioner Alexander; Vote: 6 Yes; Commissioner Flitcroft recused himself from the vote; Motion Carried.**

Steve Majchzrak, Assistant Commissioner of Regulatory Boards, addressed the Commission regarding the RFP for the examination contract. **Commissioner Collins made a motion to exercise the option to extend the contract until June 30, 2009 and add the following provisions to the contract with PSI. 1) The PSI application should be changed to include the school the test taker attended and the instructor who taught the class. The statistical data will be maintained by PSI and reported to the TREC office; 2) the contract should include that PSI may not proctor the examination off-site without prior approval of the Commission; and 3) creating an additional testing location in Middle Tennessee should be considered; seconded by Vice-Chairman Stephenson ; Unanimous Vote; Motion Carried.**

Commissioner Flitcroft made a motion to defer the scheduled sub-committee meeting to perform Ms. Maxwell's performance review until the March meeting; seconded by Commissioner Alexander; Unanimous Vote; Motion Carried.

EDUCATION REPORT, DR. KATHY RIGGS, EDUCATION DIRECTOR

- **Dr. Riggs presented courses for Commission evaluation (Exhibit 3). Commissioner Northern made a motion to remove the following courses from consideration for approval: "The Pest Inspection & Your Closing", "Games Houses Play", and "Real Estate Related Investments, IRA's Qualified Plans"; seconded by Commissioner Collins; Unanimous**

Vote; Motion Carried. Commissioner Joh made a motion to reduce the number of credit hours offered for the class "SRS: Seller Representative Specialist" from 12 hours credit to 2 hours credit; seconded by Commissioner Collins; Unanimous Vote; Motion Carried. Vice-Chairman Stephenson made a motion to approve the courses presented as amended; seconded by Commissioner Joh; Unanimous Vote; Motion Carried.

- Dr. Riggs presented graphed data (**Exhibit 4**) to the Commission of the number of test takers from August 2004 and January 2008.
- Dr. Riggs presented information regarding content of previous TREC Core Courses (**Exhibit 5**) and asked for suggestions for the curriculum of the 2009 – 2010 TREC Core Course. **Commissioner Alexander made a motion to defer the discussion of the 2009 – 2010 Core Course curriculum until Thursday, Feb 7 when J. Bucy, Governmental Affairs Liaison for the Tennessee Association of Realtors will be present to discuss pending legislation regarding education; seconded by Vice-Chairman Stephenson; Unanimous Vote; Motion Carried.**

EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

Ms. Maxwell presented the following information to the Commission for review:

- **RFP for E&O contract** – Ms. Maxwell advised the Commission that all Commissioners have a copy of the E&O RFP and contract in their meeting notebooks. She asked the Commission to review the RFP and contract and return to the next meeting with any suggestions for changes or improvements.
- **Complaint Statistics Report (Exhibit 6)** – TREC has a total of 458 open complaints. Three of the 458 open complaints were staff generated Agreed Citations and 30 are complaints against Principal Brokers pursuant to Policy # 07-002 [Errors & Omissions Insurance]. There are 19 new complaints since the January meeting. There are 439 complaints in the legal department and 19 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2007-2008 is 183. Total Civil Penalties paid in December were \$25,345.00.
- **TAR Conference Continuing Education Update** – Ms. Maxwell advised the Commission that continuing education credit cannot be offered for TREC's appearance at the upcoming TAR Conference & Trade Show.
- **Upcoming ARELLO conferences** – The Commission determined who would attend the upcoming ARELLO conference in April 2008.
- **March and May meeting planning** – The itinerary was discussed for the March 2008 meeting in Gallatin and the May 2008 meeting in Memphis.

- **Renewal Data** – Ms. Maxwell presented the Commission with information **(Exhibit 7)** regarding the number of licensees who renewed and the manner in which they paid their renewals. She also supplied the Commission with statistical data on the number of licensees and firms.
- **TREC Manuals - Commissioner Joh made a motion to order 45,000 manuals and send one to active licensees with the rest held in reserve for new licensees; seconded Vice-Chairman Stephenson; Opened to discussion; Commissioner Flitcroft asked for comments regarding manual distribution; attendees made comments; Unanimous Vote; Motion Carried.**
- **Revision of Question 5 (Criminal Convictions)** – Ms. Maxwell presented the Commission with two drafts of a revision of Question 5 on the examination application. **Commissioner Joh made a motion to accept the version that read "Have you ever pled guilty, pled nolo contendere, or been convicted of any criminal offense? (Include traffic violations that are alcohol or drug related)"; seconded by Commissioner Collins; Commissioner Northern amended the motion to include the statement "Failure to disclose any required information other than misdemeanor traffic violations is grounds for denial or revocation of a license; seconded by Commissioner Collins; opened to discussion; Commissioner Northern accepted Ms. Wiseman's suggestion to remove the parentheses around the statement "Include traffic violations that are alcohol or drug related" as a friendly amendment to his amended motion; Vice-Chairman Stephenson made a motion to defer the matter until the next day when a new revised draft may be presented for approval; seconded by Commissioner Flitcroft: Unanimous Vote; Motion Carried.**

Commissioner Alexander made a motion that if an applicant or licensee wishes to be considered for a waiver of the 50 mile rule, they must appear with their principal broker before the Commission; Motion failed for lack of a second.

Chairman Haynes recessed the meeting Wednesday, February 6, 2008 at 3:52 p.m.

TENNESSEE REAL ESTATE COMMISSION Thursday, February 7, 2008

The Tennessee Real Estate Commission reconvened on February 7, 2008 at 9:16. in Room 160, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee. The following **Commission Members were present: Chairman Charles Haynes, Vice-Chairman Stephenson, Commissioner Valerie Joh, Commissioner David Flitcroft, Commissioner Grover Collins, Commissioner Carol Tate,**

Commissioner Wendell Alexander, and Commissioner Isaac Northern. Commissioner Gary Cunningham was absent. Others present: Eve Maxwell, Executive Director, Kathryn Wiseman, Staff Attorney, Mandy Brady, Paralegal, and Kelly McDermott, Administrative Secretary.

The following persons met with the Commission: **Mary Moody, Deputy Commissioner of the Department of Commerce & Insurance, Steve Majchzrak, Assistant Commissioner of Regulatory Boards, Beth Martin, General Counsel, and Wayne Pugh, Deputy General Counsel.** They discussed the role of the legal department and the staff of the TREC office in relation to the complaint process.

J.A. Bucy, Governmental Affairs Liaison of the Tennessee Association of Realtors, addressed the Commission regarding pending legislation sponsored by TAR. He advised the Commission that the "Scrap Metal Theft Bill" presented by TAR in conjunction with the Tennessee Home Builder's Association and the Tennessee Chiefs of Police passed the Tennessee Senate with a 26-0-1 vote. He further advised them that legislation regarding "Adequate Facilities Taxes" has been withdrawn from the General Assembly. He also briefly addressed legislation (House Bill 3117 – **Exhibit 9**) and measures TAR has taken to remedy problems with septic tank disclosure. Mr. Bucy advised the Commission that TAR recently appointed a Presidential Advisory Group to study educational requirements for new real estate agents. TAR made six suggestions to the Commission regarding changes to education requirements for new licensees (**Exhibit 10**). **Russ Farrar, TAR's legal counsel,** also addressed the Commission during this discussion. **Commissioner Collins made a motion to not oppose sections 2, 3, 4, & 5 of the recommendations of TAR on educational licensing requirement presented by Mr. Bucy; seconded by Commissioner Joh; Unanimous Vote; Motion Carried.**

Legal Report, Kathryn Wiseman, Staff Attorney (Exhibit 8)

Commissioner Alexander made a motion that any legal report to be presented at a meeting be sent to the Commissioners for review by the Friday prior to meeting by 3:00 p.m.; seconded by Commissioner Flitcroft; Opened to discussion; Unanimous Vote; Motion Carried.

Ms. Kathryn Wiseman, legal counsel for TREC, presented the following complaints to the Commission:

- **2007082371, 2007088631, 2007070571, & 2007070521 – Commissioner Alexander made a motion to have legal counsel investigate, monitor civil litigation, and refer to Criminal Prosecution and report back on complaint after 60 days; seconded by Vice-Chairman Stephenson; Unanimous Vote; Motion Carried.**
- **2007080471 – Commissioner Flitcroft made a motion to issue a Consent Order offering three options: 1) revocation, 2) voluntary surrender of the license or 3) retire the licensee and flag it for reapplication. If licensee does not respond to the Consent**

Order, a formal hearing should be held. If he does respond to the Consent Order, an informal conference should be held; seconded by Commissioner Collins; Unanimous Vote; Motion Carried.

- **2006042761** – Commissioner Alexander previously reviewed the complaint. He recommended a Consent Order with a Civil Penalty of \$5,000.00 be issued and a complaint be opened against the principal broker; Commissioner Flitcroft made a motion to accept Commissioner Alexander's recommendation to issue a Consent Order with a Civil Penalty of \$5,000.00 and open a complaint against the respondent's principal broker; seconded by Vice-Chairman Stephenson; Vote: 6 Yes, Commissioner Alexander abstained; Motion Carried.
- **2007050331** – Commissioner Northern previously reviewed the complaint. He recommended a Consent Order with a Civil Penalty of \$3000.00 be issued. Commissioner Collins made a motion to accept Commissioner Northern's recommendation to issue a Consent Order with a Civil Penalty of \$3,000.00; seconded by Vice-Chairman Stephenson; Opened to discussion; Commissioner Flitcroft amended the motion to require the respondent to attend an ethics class of no less than eight hours and attend a Commission meeting; seconded by Commissioner Alexander; Amendment to the Motion Passed; Vote: 6 Yes, Commissioner Northern abstained; Motion as Amended Passed; Vote: 6 Yes, Commissioner Northern abstained.
- **2006046311 & 2006046312** – Commissioner Flitcroft previously reviewed the complaint. He recommended the complaint be dismissed. Commissioner Collins made a motion to accept Commissioner Flitcroft's recommendation to dismiss; seconded by Commissioner Alexander; Vote: 6 Yes, Commissioner Flitcroft abstained; Motion Carried.
- **2006029691** – Commissioner Joh previously reviewed the complaint. Commissioner Collins made a motion to dismiss; seconded by Vice-Chairman Stephenson; Vote: 6 Yes, Commissioner Joh abstained; Motion Carried.
- **2006045691** – Commissioner Joh previously reviewed the complaint. An informal conference will be held with the Respondent.
- **2007052941** – Commissioner Collins made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Flitcroft; Unanimous Vote; Motion Carried.
- **2005034871** – Commissioner Joh previously reviewed the complaint. Commissioner Collins made a motion to dismiss; seconded by Vice-Chairman Stephenson; Vote: 5 Yes, 1 No, Commissioner Joh abstained; Motion Carried.
- **2006040501, 2006040502, & 2006040503** – Commissioner Northern previously reviewed the complaint. He recommended the complaint be dismissed. Commissioner Flitcroft made a

motion to dismiss; seconded by Commissioner Alexander; Vote: 6 Yes, Commissioner Northern abstained; Motion Carried.

- **2006027831 & 2006027832 – Commissioner Collins made a motion to accept legal counsel’s recommendation to close and flag the respondent I’s file and issue a Letter of Warning to Respondent II; seconded by Commissioner Flitcroft for discussion; Opened to discussion; Unanimous Vote: Motion Carried.**
- **2006037521 – Commissioner Collins made a motion to dismiss; seconded by Commissioner Flitcroft: Unanimous Vote; Motion Carried.**
- **2006045161 – Commissioner Flitcroft made a motion to close and monitor litigation; seconded by Commissioner Joh; Unanimous Vote; Motion Carried.**
- **2005044971 – Commissioner Collins made a motion accept legal counsel’s recommendation to issue a Consent Order with a Civil Penalty of \$150.00; seconded by Vice-Chairman Stephenson; Unanimous Vote; Motion Carried.**
- **2006030641 – Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Flitcroft; Unanimous Vote; Unanimous Vote; Motion Carried.**
- **2007065151 – Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Flitcroft; Unanimous Vote; Motion Carried.**

Ms. Wiseman addressed the Commission regarding the Consent Log she created to track all Consent Orders.

COMMISSIONER REPORTS

Commissioner Joh, Commissioner Flitcroft, Commissioner Collins, Commissioner Tate, Commissioner Alexander, Chairman Haynes, Vice-Chairman Stephenson, and Commissioner Northern gave Commissioner reports on issues of concern to them and the Commission.

Comments from Attendees

Chairman Haynes called for comments from the attendees.

Licensees who attended the Commission meeting in order to obtain continuing education credits appeared before the Commission and gave statements regarding what they had learned from the meeting.

Chairman Haynes adjourned the meeting Thursday, February 7, 2008 at 1:15 p.m.

